

SUPPLEMENTAL AGREEMENT FOR ATM ACCESS

**DEFENDANT
DEPOSITION
EXHIBIT (COPY)
McCurdy 58**

This Agreement, which supplements the Network Card Issuer Agreement between Banco Popular de Puerto Rico and American Express Limited dated August 13, 1997, is made as of the 18th day of August, 1998 ("Effective Date") by and between:

- (1) American Express Travel Related Services Company, Inc., a company incorporated under the laws of the state of New York, United States of America, having its principal office at American Express Tower, 200 Vesey Street, New York, NY 10285 (hereinafter referred to as "Amex"); and
- (2) Banco Popular de Puerto Rico, a banking organization incorporated under the laws of the commonwealth of Puerto Rico and having its registered office at 209 Muñoz Rivera Avenue, Hato Rey, San Juan, Puerto Rico 00918 (hereinafter referred to as "BP"); and
- (3) American Express Limited, a company incorporated under the laws of the state of Delaware, United States of America, having its principal office at American Express Tower, 200 Vesey Street, New York, NY 10285 (hereinafter referred to as "AEL").

WHEREAS:

- A. BP owns or operates or has access to a network of owned and shared automated teller machines ("ATMs") bearing the ATH Brand logo which are located in Puerto Rico, the U.S. Virgin Islands, the British Virgin Islands and other locations and that are accessible for cash withdrawals by holders of cards bearing the ATH logo, which network is referred to herein as the "A Toda Hora Network" or "ATH Network"; and
- B. BP owns over 50% of the ATMs in the ATH Network which are located in Puerto Rico and the U.S. and British Virgin Islands and 100% of the ATH Brand and 100% of the functionality that switches and routes ATM Transactions (as hereinafter defined) for authorization and settlement among banks and other parties that participate in the ATH Network (referred to herein as the "ATH Switch"); and
- C. Amex operates a program known as the Express Cash program whereby American Express Cardholders have access to ATMs owned, operated, or accessible by Amex to make cash withdrawals (collectively "Transactions"); and
- D. BP and AEL have entered into an agreement dated August 13, 1997 whereby BP has a license to issue cards bearing the American Express brand ("BP American Express Cards") in accordance with the terms thereof (the "Basic Agreement") and, in accordance with Article 7 of the Basic Agreement, (1) BP is required to use reasonable efforts to provide access to the ATH Network to all American Express Cardholders (the term "American Express Cardholders" including holders of Cards issued by Amex, Amex

Entities and other Issuers (including BP) as defined in the Basic Agreement) and (2) AEL is required to use reasonable efforts to provide access to the Express Cash Network for BP American Express Cardholders; and

- E. BP and Amex each have separate agreements with Deluxe Data Systems, Inc. ("Deluxe") whereby, among other things, Deluxe routes and settles (i) Transactions made by BP cardholders at ATMs that are owned by Amex and (ii) Transactions made by American Express Cardholders at ATMs that are part of the ATH Network; and
- F. Pursuant to the Basic Agreement, the Parties desire to agree on terms whereby BP American Express Cards will be used at ATMs in the ATH Network and at other ATMs that are part of the Express Cash program ATM network.

NOW, THEREFORE, it is hereby agreed as follows:

1. Definitions

Unless otherwise defined herein, the defined terms used in the Basic Agreement shall have the same meanings when used in this Supplemental Agreement.

2. Access To The Networks

- (a) Through its arrangement with Deluxe, BP undertakes to permit all American Express Cardholders to have access to the ATH Network, to withdraw such sums of cash as Amex, Amex Entities and other Issuers shall from time to time permit, subject to operational availability. In the event that BP establishes an arrangement with another ATM switch operator in lieu of or in addition to Deluxe to provide similar services for BP as described in E. above, the provisions of this Supplemental Agreement that apply to Deluxe shall be deemed to apply to such other ATM switch operator. In the event that BP owns, operates or has access to another ATM Network in addition to the ATH Network, BP shall use reasonable efforts to provide access to that network for all American Express Cardholders as provided in Article 7 of the Basic Agreement, where it is feasible for BP to do so.
- (b) Through its arrangement with Deluxe, Amex undertakes to permit BP American Express Cardholders to have access to ATMs within the Express Cash program network for Transactions, to withdraw such sums of cash as BP shall from time to time permit, subject to operational availability.
- (c) To the extent that ATMs within the ATH Network, on the one hand, and the Express Cash program network, on the other hand, are owned or operated by third parties, BP shall use reasonable efforts to obtain access to such third party ATMs for all American Express Cardholders and Amex shall use reasonable efforts to obtain access to such third party ATMs for BP American Express Cardholders. However, in the event that, despite such reasonable efforts, a third party on the ATH Network

or a third party on the Express Cash program network refuses to provide such access, such action by such third party shall not be deemed to be a breach of this Supplemental Agreement or the Basic Agreement.

- (d) American Express Cardholders (including BP American Express Cardholders) shall not have access to the ATH point of sale Network to make purchases of goods or services at S/Es with Cards.
- (e) BP shall send, or shall cause Deluxe to send, Amex a memo report or other form of report in a form as mutually agreed by Amex and BP of all ATM Transactions by BP American Express Cardholders which are incurred at ATMs within the Express Cash program network, including those at ATH Network ATMs, with "On Us" Transactions (as defined in Section 3(e), below) separately identified. Such reports shall be sent to Amex no later than 15 days following the end of each calendar quarter and shall reflect such ATM Transactions that occurred during that calendar quarter.
- (f) BP shall not permit Deluxe or any other ATM switch operator (except as specifically provided in Section 3(a) below) to route any Transactions by BP American Express Cardholders at ATMs in the Express Cash Network in any manner that bypasses Amex. Notwithstanding the immediately preceding sentence, on a temporary basis, through December 31, 1999 or until such date as BP establishes a direct connection between its systems and Amex's, whichever is earlier, BP may permit Deluxe to route authorization of ATM Transactions by BP American Express Cardholders at ATMs in the Express Cash program network directly to BP.

3. Fees

- (a) So long as BP owns more than 50% of the ATH Switch and at least 50% of the ATMs in the ATH Network which are located in Puerto Rico, the U.S. Virgin Islands and the British Virgin Islands, BP may cause the ATH Switch to route authorization of Transactions incurred by BP American Express Cardholders at such ATMs directly to BP. Such Transactions shall be referred to as "On Us" Transactions. BP shall pay Amex a net fee of ten cents (US \$.10) for each "On Us" Transaction completed at an ATH ATM. Such pricing shall be referred to as "On Us" Pricing. Only ATM Transactions by BP American Express Cardholders at ATH Network ATMs located in Puerto Rico, the U.S. and British Virgin Islands can be eligible to be considered "On Us" Transactions and receive "On Us" Pricing, provided that BP meets the ownership requirements stated in this Section 3(a). BP shall be solely responsible for settlement of "On Us" Transactions. BP cannot charge AMEX any fee for "On Us" Transactions.
- (b) In the event that BP owns less than 51% of the ATH Switch or less than 50% of the ATMs in the ATH Network which are located in Puerto Rico and the U.S. and British Virgin Islands, no ATM Transactions by BP American Express Cardholders

at ATMs in the ATH Network shall qualify for "On Us" Pricing. In such event, BP shall also, at Amex's request, and when technically feasible for BP, cause the ATH Switch to route authorization of such Transactions through Deluxe to Amex and back through Deluxe to BP. BP shall pay Amex a net fee of One Dollar (US \$1.00) for each Transaction completed by a BP American Express Cardholder at such ATH Network ATM. If, following such ownership decrease, BP's ownership returns to more than 50% of the ATH Switch and 50% or more of the ATMs in the ATH Network which are located in Puerto Rico and the U.S. and British Virgin Islands, as soon thereafter as reasonably practicable, Amex shall restore "On Us" Pricing, which shall remain in effect so long as BP owns more than 50% of the ATH Switch and 50% or more of such ATMs.

- (c) BP shall provide a report to Amex each calendar quarter indicating its percentage ownership of the ATH Switch and of ATMs in the ATH Network located in Puerto Rico and the U.S. and British Virgin Islands, in a form mutually agreed by the parties, which agreement shall not unreasonably be withheld.
- (d) BP shall pay Amex a fee of One Dollar (US \$1.00), plus the amount paid by Amex to Deluxe, for each Transaction by BP American Express Cardholders at all ATH Network ATMs outside of Puerto Rico and the U.S. and British Virgin Islands that participate in the Express Cash Program and for each Transaction (excluding "On Us" Transactions) by BP American Express Cardholders at all other ATMs that participate in the Express Cash Program.
- (e) All fees payable by BP to Amex shall be paid on a quarterly basis no later than 15 days following the end of each calendar quarter. Payment shall be made to Amex at the address designated by Amex and shall be submitted together with the report referred to in Section 2(c) above that supports the amount of each payment.

4. Direct Connection Between BP and Amex

BP, at its sole expense, shall use its reasonable best efforts to complete, by no later than December 31, 1999, the systems development work necessary to establish a direct connection between its systems and Amex's for the purpose of routing directly to Amex authorization of Transactions by BP American Express Cardholders and other American Express Cardholders at ATMs within the ATH Network and other ATMs within the Express Cash program network. At such time as BP has completed this systems development work, the parties shall enter into a new agreement covering the terms of ATM access utilizing this connection.

5. Term - Termination

- (a) This Supplemental Agreement shall be in effect from the Effective Date set forth above and shall continue in effect until December 31, 1999 or until the parties enter into a new agreement as referenced in Section 4 above, whichever is earlier, provided that the Basic Agreement remains in effect.

- (b) Notwithstanding the provisions of Section 5(a), above, any party shall have the right to terminate this Supplemental Agreement summarily by notice in writing if any other party shall have committed any material breach of its obligations under this Supplemental Agreement and, in the case of a remediable breach, shall have failed to remedy such breach within thirty (30) days of having received a notice of default sent by registered letter, or within such extended period as approved by the other parties, such approval not to be unreasonably withheld.

6. General

Articles 3, 7, 12.02, 15, 16, 18, 19, 21, 22, 23 and 24 of the Basic Agreement are incorporated by reference herein, mutatis mutandis.

7. Notices

Unless otherwise provided herein or agreed to by the parties, any notices, requests or other communications thereunder shall be in writing (by telex, cable or letter) and sent to the addresses set out below:

If to Amex to: American Express Travel Related
Services Company, Inc.
200 Vesey Street
New York, NY 10285
USA
Attention: President, American Express Global Network Services

Copy to: American Express Travel Related Services Company, Inc.
200 Vesey Street
New York, NY 10285
USA
Attention: General Counsel's Office

If to BP to: Banco Popular de Puerto Rico
209 Munoz Rivera Avenue
Hato Rey
San Juan, Puerto Rico 00918
Attention: President

Copy to: Banco Popular de Puerto Rico
Legal Division
P.O. Box 362708
San Juan, Puerto Rico 00936-2708

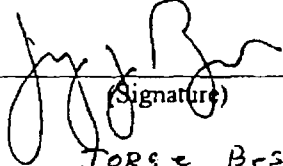
If to AEL to:

General Counsel's Office
American Express Travel Related Services Company, Inc.
American Express Tower
World Financial Center
New York, New York 10285

IN WITNESS WHEREOF the parties hereto have duly executed this Supplemental Agreement as of the date first above written.

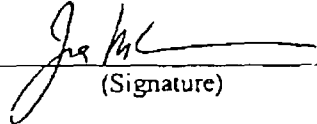
BANCO POPULAR de PUERTO RICO

**AMERICAN EXPRESS TRAVEL
RELATED SERVICES COMPANY, INC.**

By: 
(Signature)
Jorge Brasa
Name (printed or typed)

Title

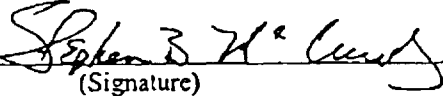
Date

By: 
(Signature)
James M. Li
Name (printed or typed)

President - Global Network Services
Title

Date

AMERICAN EXPRESS LIMITED

By: 
(Signature)

Stephen B. McCurdy
Name (printed or typed)

Vice President - Global Network Services
Title

Date